

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 229 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA and
MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

BRIJBIHARISING JAIGOVINDSING

Versus

STATE OF GUJARAT

Appearance:

MR PJ YAGNIK, Advocate appointed for the
appellant-accused.

MR. Y.F. MEHTA, Addl. P.P. for the respondents.

CORAM : MR.JUSTICE N.J.PANDYA and
MR.JUSTICE H.L.GOKHALE

Date of decision: 06/12/96

ORAL JUDGEMENT (Per N.J. PANDYA, J)

The appellant is the accused of Criminal Case No.

62 of 1990 of the Court of learned Sessions Judge, Jamnagar. By her judgement dated 27.12.1991 the appellant came to be convicted for offence under Section 20(b)(2) of N.D.P.S. Act and was awarded rigorous imprisonment for 10 years and fine of Rs. 1 lakh and in default to undergo

further R.I. for 2 years.

According to the prosecution the P.I. of City B-Division Police Station, Jamnagar, had received information of two persons dealing in narcotic substances called charas and therefore on 29.8.1990 at about 11.00 p.m. in the night they had set up trap near President Hotel of Jamnagar City. The police party was awaiting with two panchas and at that time they saw two persons so coming on one bicycle. The person who was plying the cycle came to be chargesheeted as accused No. 2 and the article was found on the passenger of that bicycle sitting in the front cross-bar at that time. The article found was charas weighing 155 grams and accordingly charge came to be framed by the Trial Court exh. 3.

The accused No. 1 came to be convicted and accused No. 2 was acquitted.

The requirement of Section 42 that the information received should be reduced to writing has been done and the requirement of Section 50 that the accused should be offered to be searched in presence of either a Gazetted Officer or an Executive Magistrate is also fulfilled as this was clearly stated to the accused by the P.I. Exh. 18 in paragraph 2 at page 133. This has been corroborated by the panch witness in the cross-examination Ext. 14 at page 79 of the paper book.

With regard to the muddamal article and its handling it is given on record that it was immediately handed over to the P.S.O. concerned after the trap procedure was over and within a couple of days the concealed bag was sent over personally through LCB constable for being examined by the Forensic Science Laboratory at Junagadh.

The learned Advocate Shri Yagnik had tried to point out from the record that the panchas are pre-selected and the police had approached the problem with pre-determined mind. This could be an impression when one reads the testimony of R.S. Vakani when he clearly says that one police constable Bharatsingh has come to his place to call him on 29.8.1990 after 8 p.m. to offer his services as panch witness. The name of the second panch was also revealed to him and as the identity of that person was known to the panch witness, he offered to constable to take him there.

However, when one reads the testimony of P.I. Shri Swami, he had taken precaution of approaching the

head of the department of these panchas namely Mamlatdar of city of Jamnagar. Of course he had contacted on telephone at about 10 p.m. and thereafter getting names from him had sent this constable Bharatsing to bring both the panchas. In this background if the P.I. has taken precaution to take the panchas and those persons were government servants and that too through respective head of the office merely because their names were known to the P.I. would not lead to pre-determined exercise on his part.

It is clearly established that on 29.8.1990 near the said President Hotel the accused were trapped and of the two persons one was found having narcotic substance called charas for which he could not offer any explanation. The only thing stated by him in further statement under Section 313 is that he was sitting in Municipal Garden and was picked up by the police. This explanation is merely an afterthought.

In the trial two defence witnesses were examined but on reading the deposition of these two witnesses, the defence is not found to have been carried out any further at all. In fact the testimony does not lead either of the defence or of the prosecution anywhere and as such for our purpose they are hardly of any importance.

The net result therefore is that no infirmity is found in the trial court's order and the appeal therefore fails and it is dismissed. The order of the trial court convicting the appellant is confirmed.

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